

REMARKS

This responds to the Office Action dated 3 November 2004. Applicant respectfully requests reconsideration of the application in view of the following remarks. Claims 1-49 remain pending in the application.

Allowable Claims

Applicant acknowledges that claims 23-40 and 44-49 are allowed. Applicant also acknowledges that claims 3-11, 13-16, 18-22, and 42 would be allowable if rewritten in independent form.

Response to Rejections Under 35 U.S.C. § 102

After initially allowing the claims, the Examiner has now rejected claims 1, 2, 12, 17, 41, and 43 under 35 U.S.C. § 102(b) as being anticipated by Ruckwardt (U.S. 5,577,695). In particular, the Examiner states that Ruckwardt discloses all of the limitations recited in the rejected claims. The Examiner notes that although Ruckwardt does not disclose an archery accessory mount, the device taught by Ruckwardt could be used for the same purpose with no structural changes. Applicant respectfully traverses the rejection.

As the Examiner knows, for a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference. *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675,677 (Fed. Cir. 1988). However, as the Examiner has recognized, the rejected claims each include distinguishing limitations.

Claim 1 recites “a first sliding mount surface for engagement with a bow.” The Examiner identifies a “leg 9” of the Ruckwardt device as the “first sliding mount surface.” However, the

phrase “for engagement with a bow,” was apparently and inexplicably read out of the claim. A proper § 102 rejection must support identity between the claim recitations and the disclosure of the reference. There is no support in the Ruckwardt reference, which is directed solely to an automobile horn bracket, for the proposition that an automotive bracket could be used with an archery bow. Accordingly, the Examiner has failed to make a *prima facie* case of anticipation.

Moreover, although the Examiner has cited the “leg 9” of Ruckwardt as a “sliding mount surface,” the leg 9 is not a sliding surface at all. It is unclear whether the Examiner refers to the outside visible surface or the inside surface of the leg 9 as the “sliding mount surface,” but neither the inside nor outside surfaces of the leg 9 are capable of “sliding.” Initially, Applicant notes that the Ruckwardt automotive bracket includes two mounting holes 11, 12, each with a respective fastener 21, 22 extending therethrough. The two fasteners 21, 22 preclude the automotive bracket from “sliding” anywhere. There is no meaning to a “sliding” surface for a bracket fastened at two positions. The “leg 9” is clearly not a “sliding mount surface” by any reasonable construction of the phrase. In addition, the “leg 9” has hindrances on both the inside and outside surfaces that would prevent sliding, even if it were possible otherwise (which it is not considering the two spaced fasteners 21, 22). The outside surface of the “leg 9” includes a “first support area 2” that juts from the outside surface. The outside surface of the “leg 9” would not touch or slide against anything due to the jutting first support area 2. Likewise, a reinforcing rib 10 that extends between the first and second legs 8, 9 would prevent sliding along the inside surface of the “leg 9.” Accordingly, “leg 9” of Ruckwardt cannot be considered a “sliding mount surface” and the rejection of claim 1 should be withdrawn.

Other structural limitations found in claim 1 are missing from Ruckwardt as well. For example, claim 1 requires “a second abutting mount surface for limiting slide distance of the first sliding mount surface.” The leg 9 (identified by the Examiner as the “first sliding mount surface”) is not a sliding surface and therefore it cannot be limited in slide distance. Nevertheless, assuming *arguendo* that the leg 9 was capable of sliding, the “second abutting mount surface” identified by the Examiner as leg 8 would not limit slide distance. The reinforcing rib 10 extends between the first and second legs 8, 9 of the Ruckwardt device. If the leg 9 could “slide” (but it cannot because it is secured by two fasteners 21, 22) it could only slide along its inside surface until an engaging surface contacted the *reinforcing rib 10*, not the leg 8. The leg 8 would have no limiting effect on the leg 9 as required by claim 1. Therefore, with respect to the Ruckwardt device, this positively recited limitation of claim 1 is also missing from Ruckwardt.

In addition, claim 1 requires a “third surface opposite the first sliding mount surface having an angled portion for translating a mounting force in a first direction to a sliding force in a second direction.” Ruckwardt does not anticipate this limitation either. The Examiner states that “leg 8 [has] second and third mount surfaces, in parallel planes,” apparently in reference to the “third surface opposite...” limitation of claim 1. However, claim 1 requires that the “third surface [is] opposite the *first* sliding mount surface,” not opposite the second mount surface as stated by the Examiner. The Examiner has not even alleged that Ruckwardt discloses opposite *first and third* surfaces. Applicant can demur to the present rejection without argument and claim 1 would still be allowable, because the Examiner has not identified first and third *opposing* surfaces. The first surface, as identified by the Examiner, is the “leg 9.” The second and third surfaces identified by the Examiner are parallel planes of the “leg 8.” Yet no surface of “leg 9” is “opposite” a surface of “leg

8.” Accordingly, the § 102 rejection of claim 1 is improper and not supported by the Office Action.

Finally, with regard to claim 1, there is no “angled portion for translating a mounting force in a first direction to a sliding force in a second direction” shown in Ruckwardt. Referring to Fig. 2 of Ruckwardt, first and second fasteners 21, 22 are represented. Applicant contends that with two fasteners 21, 22, even if there was a force applied by the second fastener 22 to the angled surface (near 18) (and no such force or mechanism for providing it is disclosed or suggested as required for a proper § 102 rejection), there would be no sliding force. The first fastener 21 precludes sliding movement from force applied to the “angled portion.”

Independent claim 12 also includes limitations not identically disclosed by Ruckwardt. Primarily, Applicant notes that claim 12 is “[a]n archery accessory mounting apparatus.” Ruckwardt, as the Examiner has acknowledged, has nothing to do with an archery accessory and there is no disclosure that suggests the automotive bracket of Ruckwardt could be used as an archery accessory mounting apparatus. The § 102 rejection of claim 12 is thus improper.

Moreover, claim 12 includes limitations that the Examiner has not even alleged to be found in Ruckwardt. For example, claim 12 recites “first and second mounting surfaces being in different planes.” The Examiner has not identified “first and second *mounting* surfaces” in Ruckwardt that are in different planes. The burden is on the Examiner to show that the claim limitations are identically shown in a prior art reference before rejecting a claim under § 102, and the Examiner has not done so. The Examiner identifies “second and third mount surfaces [of leg 8], in parallel planes,” but at most, only one of the surfaces of leg 8 can be a “*mounting* surface,” not both. There is no figure or

disclosure in Ruckwardt teaching that leg 8 has both a first and a second mounting surface. Accordingly, the rejection of claim 12 under § 102 is improper.

Further, claim 12 recites “a first recess opposite of the first mounting surface, the recess comprising a taper of varying depth.” Ruckwardt does not disclose this limitation. If the inside surface of the leg 8 is the “first mounting surface” (which has not been alleged by the Examiner to this point, the “first sliding mount surface has only been identified by the Examiner as leg 9), it is possible that Ruckwardt could include an opposite recess identified by Ruckwardt as second area 3. Even so, the second area 3 does not have a “taper of varying depth.” The only possible “taper” is the angled surface near element 18. However, as clearly shown in Fig. 2, the angled surface near element 18 of Ruckwardt comprises *a single depth*, not varying depth as required by claim 12. The angled surface near element 18 always extends to the same, single depth: from the outside surface 7 of leg 8 to the bottom surface 18. There is no variation in taper depth shown or suggested. On the other hand, Applicant refers to Figs. 3A-3C of the present application, which show an example of a “taper of varying depth.” The tapered portion 112 of Figs. 3A-3C shows a shallow leading part 116 and a deep trailing part 118. Thus there are “tapers of varying depth.” Applicant respectfully directs attention to pages 9 and 10 of the present application, which fully describes one example of a “taper of varying depth” that is not identically taught or suggested by Ruckwardt. Thus, the § 102 rejection of claim 12 is improper.

Claim 41 also includes several limitations not taught or suggested by Ruckwardt. First and foremost, claim 41 *positively recites* “an archery accessory.” The “archery accessory” is not part of the preamble, it is a positive element limitation. Ruckwardt, on the other hand, does not teach or suggest “an archery accessory” or anything like it. The Examiner must show that Ruckwardt

3323850_3.DOC

identically teaches all claim limitations for a proper § 102 rejection, and has not done so. To be sure, Ruckwardt cannot be used to anticipate “an archery accessory” because Ruckwardt is solely directed to an automotive horn bracket.

In addition, claim 41 requires “a tapered recess...shaped such that when a mounting force is applied to the tapered recess...at least one *orthogonal aligning force* is transmitted to the mounting device, thereby positioning the first and second surfaces in a precise repeatable position *adjacent to a bow*.” Ruckwardt does not identically disclose any “orthogonal aligning force.” Ruckwardt has two separate mount holes, and neither is taught to be “aligned” by an orthogonal aligning force. As discussed above, the two separate mount holes would preclude transmission of an “orthogonal aligning force.” Moreover, the burden is on the Examiner to identically show “positioning the first and second surfaces in a precise repeatable position adjacent to a bow” to support a § 102 case of anticipation. The Examiner has not done so. There is a positive recitation of positioning the mount “adjacent to a bow.” This limitation must be shown or suggested by the prior art for any rejection, it cannot be ignored. Accordingly, the rejection of claim 41 is improper and not supported by the Ruckwardt reference.

Rejected claims 2, 17, and 43 depend from independent claims that should be allowed. Further, inasmuch as the Examiner has identified the “first sliding mount surface” as leg 9, and the “second and third mount surfaces” as the inner and outer surfaces of “leg 8,” the limitations recited in at least claims 17 and 43 are not met. Claim 17 recites that the “different planes are substantially orthogonal to one another.” The Examiner identified the “different planes” as “parallel planes” of leg 8. Parallel planes are not orthogonal. Similarly, claim 43 recites “the first and third surfaces...substantially parallel to one another.” However, the Examiner identified the “first

3323850_3.DOC

surface” as leg 9, and the “second surface” as part of leg 8. The surfaces of legs 8 and 9 are certainly not “parallel to one another.”

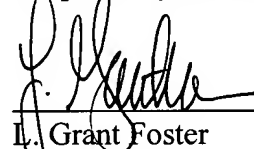
Accordingly, based on the arguments offered above, Applicant respectfully requests that the rejection of claims 1, 2, 12, 17, 41, and 43 under 35 U.S.C. § 102(b) be withdrawn.

Conclusion

Applicant respectfully submits that all claims are in condition for allowance. Applicant respectfully requests the Examiner to telephone the undersigned attorney if there are unresolved matters in the present application so that the examination process can be expedited.

Date: 3 FEBRUARY 2005

Respectfully submitted,



L. Grant Foster
Reg. No. 33,236